BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION

DOUGLAS E. MERRIMAN	)	
Claimant	)	
VS.	)	
	)	Docket No. 1,019,607
RYDER INTEGRATED LOGISTICS	)	
Self-Insured Respondent	)	

ORDER

Respondent appealed the November 23, 2004 preliminary hearing Order and the November 29, 2004 Order Nunc Pro Tunc entered by Special Administrative Law Judge Marvin Appling.[1]

ISSUES

On May 21, 2004, claimant was injured in an accident on his way home from a laboratory where he had undergone a random drug test. Judge Appling determined claimant's accident was compensable under the Kansas Workers Compensation Act. Consequently, the Judge awarded claimant both temporary total disability benefits and medical benefits.

Respondent contends Judge Appling erred. Respondent argues claimant's employment duties were completed when he left the laboratory. Accordingly, respondent contends claimant's accident is not compensable under the Workers Compensation Act pursuant to the "going and coming" rule set forth in K.S.A. 2003 Supp. 44-508(f).

Conversely, claimant argues his trip to the laboratory for the mandatory drug test constituted a work-related errand or "special-purpose trip." Therefore, claimant contends the trip was an incident of his employment, which is an exception to the going and coming rule. Claimant also argues the whole trip should be considered as being incidental to his employment. Accordingly, claimant requests the Board to affirm the preliminary hearing Orders.

[1] The Order Nunc Pro Tunc was signed by Administrative Law Judge John D. Clark for Judge Appling.

The only issue before the Board on this appeal is whether claimant's May 21, 2004 accident arose out of and in the course of his employment with respondent.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record compiled to date, the Board finds and concludes:

The Judge's implicit finding that claimant's May 21, 2004 accident arose out of and in the course of his employment with respondent should be affirmed.

The Workers Compensation Act should be liberally construed for bringing employers and employees within the provisions of the Act. The Act provides:

> It is the intent of the legislature that the workers compensation act shall be liberally construed for the purpose of bringing employers and employees within the provisions of the act to provide the protections of the workers compensation act to both. The provisions of the workers compensation act shall be applied impartially to both employers and employees in cases arising thereunder.[2]

Accidents occurring while employees are on their way to work or after leaving work are generally not compensable under the Act.

> The words "arising out of and in the course of employment" as used in the workers compensation act shall not be construed to include injuries to the employee occurring while the employee is on the way to assume the duties of employment or after leaving such duties, the proximate cause of which injury is not the employer's negligence. An employee shall not be construed as being on the way to assume the duties of employment or having left such duties at a time when the worker is on the premises of the employer or on the only available route to or from work which is a route involving a special risk or hazard and which is a route not used by the public except in dealings with the employer. . . .[3]

But there are exceptions to the above going and coming rule. The statute itself provides two exceptions – a "premises" exception and a "special hazard" exception. And the Kansas Court of Appeals has also held the going and coming rule does not preclude an injured worker from recovering workers compensation benefits when the travel was an incident of the employment.

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[2] K.S.A. 44-501(g).

[3] K.S.A. 2003 Supp. 44-508(f).

> Under the "incident of employment" exception to the going and coming rule, injuries incurred while going and coming from places where work-related tasks occur can be compensable where the traveling is either (a) intrinsic to the profession or (b) required in order to complete some special work-related errand or special-purpose trip in the scope of employment.[4]

Claimant's accident occurred when he left a laboratory where he had been sent by respondent for a mandatory random drug test. The Board finds the trip to and from the laboratory was a work-related errand, which falls within one of the exceptions to the going and coming rule. And as the Kansas Supreme Court noted in *Blair*,[5] it is logical to treat the trip home as an integral part of a business errand rather than to treat the errand as concluded the moment the worker headed home.

Consequently, claimant's accident arose out of and in the course of his employment with respondent. And claimant is entitled to receive benefits under the Workers Compensation Act.

WHEREFORE, the Board affirms the November 23 and 29, 2004 preliminary hearing Orders.

IT IS SO ORDERED.

Dated this ____ day of January 2005.

BOARD MEMBER

c: J. Shawn Elliott, Attorney for Claimant
Clifford K. Stubbs, Attorney for Respondent
Marvin Appling, Special Administrative Law Judge
Paula S. Greathouse, Workers Compensation Director

[4] *Brobst v. Brighton Place North*, 24 Kan. App. 2d 766, Syl. ¶ 3, 955 P.2d 1315 (1997).

[5] *Blair v. Shaw*, 171 Kan. 524, 529-530, 233 P.2d 731 (1951).